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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 00-6273-CR-HUCK

**UNITED STATES OF AMERICA,**

Plaintiff,

v.

**FREDERICK J. MASSARO and  
ARIEL HERNANDEZ,**

Defendants.

/

**GOVERNMENT'S MOTION FOR ADDITIONAL TIME WITHIN WHICH TO ADVISE  
THE COURT AS TO ITS INTENTION TO SEEK THE DEATH PENALTY**

COMES NOW the United States of America, by and through the undersigned Assistant United States Attorney, and files this Motion seeking an additional thirty (30) days within which to advise the Court as to its intention to seek the death penalty against the defendants Frederick J. Massaro and/or Ariel Hernandez in the instant case and, in support thereof, asserts the following:

1. The defendants Frederick J. Massaro and Ariel Hernandez are charged, inter alia, with RICO murder, in violation of Title 18, United States Code, Section 1959(a)(1). This is a potential capital crime.

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J.D.

2. Consistent with the protocol established by the Department of Justice in such cases, the undersigned solicited from defense counsel in this case any mitigation materials which they wished to have considered by the United States Attorney's Office and the Department of Justice in reaching a decision as to whether the sentence of death would be sought against the defendants Massaro and/or Hernandez. Counsel for defendant Massaro submitted his materials to the undersigned on or about February 22, 2001. Counsel for the defendant Hernandez did not submit his materials to the undersigned until on or about March 27, 2001. Thereafter, at the request of counsel for Hernandez, a meeting was held on April 12, 2001 among defense counsel for both defendants and supervisory personnel of the United States Attorney's Office during which the death penalty issue was discussed.

3. Following the aforesaid meeting on April 12, 2001, all of the requisite materials concerning this issue were forwarded to the responsible persons at the Department of Justice. Thereafter, at a status conference held on April 19, 2001, this Court ordered that the government file a report by April 30, 2001 advising as to the government's position with reference to this issue.

4. The undersigned is advised that, under the protocol established by the Department of Justice, defense counsel is afforded an opportunity to consult with the responsible officials at the Department prior to a decision being reached. The undersigned is further advised that, due to logistical considerations, it is impossible for such consultations, and an ultimate decision, to be realized by April 30, 2001.

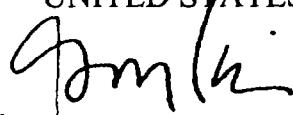
WHEREFORE, the government respectfully requests that this Court grant an additional thirty (30) days for the government to advise this Court as to whether the penalty of death will be sought against the defendants Massaro and/or Hernandez in the instant case.

The undersigned has consulted with Jeffrey D. Weinkle., Esquire, counsel for defendant Hernandez, who advised that he has no objection to the Court's granting of the government's foregoing Motion..

Respectfully submitted,

GUY A. LEWIS  
UNITED STATES ATTORNEY

By:

  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by U.S. mail to the following on this 24<sup>th</sup> day of April, 2001.

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**LAWRENCE D. LaVECCHIO**  
Assistant United States Attorney